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March 19, 2013

Via Electronic Mail

New York State Homes and Community Renewal
Attention: Alison Russell
The Hampton Plaza, 2nd Floor
38-40 State Street
Albany, New York 11207-2804
Telephone: (518) 474-2057
Email: HCRConPln@nyshcr.org

Re: **Comments on the State of New York Action Plan for Community
Development Block Grant Program Disaster Recovery**

Dear Ms. Russell:

The NAACP Legal Defense & Educational Fund, Inc. (LDF) writes to offer its comments on the State of New York's Action Plan for Community Development Block Grant Program Disaster Recovery ("Action Plan") published on March 12, 2013. The Action Plan outlines how the State of New York intends to spend the first \$1.7 billion in Community Development Block Grant Disaster Recovery (CDBG-DR) funds appropriated by Congress for disaster recovery from Hurricanes Sandy and Irene and Tropical Storm Lee.¹ LDF, the nation's premier legal organization fighting for racial justice, has long worked to ensure that race is not a barrier to African Americans as they seek equal access to economic security. In the context of disaster recovery, LDF seeks to ensure that recovery programs using public funds help those most in need and do not create or perpetuate unfair racial disparities.

On March 5, 2013, the U.S. Department of Housing and Urban Development (HUD) published Federal Register Notice 5696-N-01 ("HUD Notice"), detailing the requirements for grantees to receive CDBG-DR funds provided by the 2013 Appropriations Act.² Among the requirements, grantees "must include sufficient information so that citizens... will be able to understand and comment on the Action Plan."³ We believe the Action Plan lacks sufficient specificity to meet this requirement. In particular, we are concerned with the Action Plan's failure to include: (1) detailed

¹ The Disaster Relief Appropriations Act, Pub. L. No. 113-2 (2013) ("2013 Appropriations Act").

² Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy, 78 Fed. Reg. 14329 (Mar. 5, 2013).

³ *Id.* at 14336.

demographic information, such as race and ethnicity, regarding the affected populations in its unmet needs assessment; (2) the criteria for the distribution of housing-related funds to ensure benefits to low- and moderate-income (LMI) households; (3) an adequate description of how grant recipients will encourage the provision of disaster-resistant housing for LMI and minority residents; and (4) specific language regarding the ways in which the State will ensure that all subgrantees take steps to meet their legal obligation to affirmatively further fair housing.⁴ Accordingly, we request that the New York State Homes and Community Renewal (NYSHCR) Office of Community Renewal (OCR) revise and supplement the Action Plan consistent with our comments below.

(1) Inadequacy of Assessment of Unmet Needs of Affected Populations

Pursuant to the HUD Notice, New York State is required to “develop a needs assessment to understand the type and location of community needs to enable it to target limited resources to areas with the greatest need.”⁵ For the following reasons, we do not believe the Action Plan adequately assesses community needs; therefore, the Action Plan does not appear to target resources where they are needed most.

First, based on currently available information, in New York State – excluding New York City⁶ – significantly more homeowners registered for Federal Emergency Management Agency (FEMA) assistance than did renters. Presumably this is why the housing assistance programs set forth in the Action Plan target more resources to homeowners than to renters. Yet, it must be stressed that affected renters, as a group, are much poorer than affected homeowners – 52% of affected renter households in the State earn \$30,000 or less; in contrast, only 24% of affected homeowner households earn \$30,000 or less.⁷ Despite the disproportionate numbers of renters who are low-income, the Action Plan seems to neglect renters’ immediate needs almost entirely; not a single program provides emergency relief for renters. In fact, because renters are more likely to be low-income and generally less likely to have resources to draw from than homeowners (as discussed below), renters’ need for assistance is likely greater.⁸

The Action Plan seems to support this point. It notes that recent disasters have “affected both market-rate rental properties housing families with higher incomes, and a substantial number of subsidized and affordable rental properties. . . . To ensure that the rental market rebounds and affordable housing options persist for those in storm-affected areas, it will be important to direct assistance to rental properties in addition to owner-

⁴ See 87 Fed. Reg. at 14347

⁵ *Id.* at 14336.

⁶ Because the housing programs in the Action Plan exclude homes located in New York City, we exclude data for New York City.

⁷ See Enterprise Community Partners, *FEMA Assistance Analysis* at 5, available at <http://www.practitionerresources.org/cache/documents/678/67899.pdf> (New York State (w/o NYC) Table of FEMA Registrants).

⁸ See, e.g., Rebecca Manski, *Sustenance After Hurricane Sandy*, Civileats.com (Jan. 2, 2013), <http://civileats.com/2013/01/02/sustenance-after-hurricane-sandy/>; *Atlantic City’s poorest endure Superstorm Sandy’s hardships with grace, gratitude*, Foxnews.com (Nov. 14, 2012), <http://www.foxnews.com/weather/2012/11/14/atlantic-city-poorest-endure-superstorm-sandy-hardships-with-grace-gratitude/>.

occupied properties.”⁹ This is an important goal, especially in light of the affordable housing shortage in affected parts of New York like Long Island¹⁰ both pre- and post-Sandy. However, the Action Plan does not include any details regarding the provision of rental housing anywhere in the affected areas. In Section 3.A., the Action Plan lists five different housing assistance programs, each designed to address different types of housing units ranging from owner-occupied or income-generating single family homes to multi-unit properties with eight or more units. These programs are designed to provide funding to property owners whose single or multi-unit properties suffered damage as a result of Sandy. While some of this rehabilitation and reconstruction may provide housing for displaced renters in the future, it does not address the needs of currently displaced renters despite being required to do so.

The Action Plan must describe how the State intends to minimize displacement of persons and assist any persons displaced.¹¹ However, the Action Plan only states that the State and any subgrantees “will be expected to minimize displacement of persons or entities and assist displaced as a result of the disasters.”¹² The Plan must outline how the State intends to accomplish these goals, and should include guarantees that low-income and minority residents will not be disproportionately displaced as a result of the proposed housing assistance programs.

Second, the Action Plan lacks any analysis of the characteristics of the populations affected beyond categorizing them as either renters or homeowners. According to an analysis by Enterprise Community Partners, 74% of households in New York State – again, excluding New York City – that have registered for FEMA assistance are homeowners, and 26% of registrants are renters.¹³ As stated above, more than half of renter registrants earn \$30,000 or less while less than a quarter of homeowner registrants earn so little. Additionally, the proportion of African-Americans and Latinos is much higher among renters than owners – 17% of renters are African-American and 23% are Latino, while only 6% of owners are African-American and 8% are Latino. Thus, any plan that does not provide adequate assistance to renters may adversely affect low-income and minority residents despite their demonstrated need for assistance.

Lastly, the Plan does not explain how the State intends to address the particular needs and challenges of racial and ethnic minorities who are likely to be concentrated in particular areas due to historically exclusionary housing policies and practices. For

⁹ New York State Office of Community Renewal, State of New York Action Plan for Community Development Block Grant Program Disaster Recovery (“Action Plan”) (Mar. 12, 2013) at 8, available at <http://www.nyshcr.org/Publications/CDBGActionPlan.pdf>.

¹⁰ While New York’s minimum wage is only \$7.25 per hour, a renter would have to earn over \$30 per hour to afford a two-bedroom apartment in Nassau and Suffolk Counties. See National Low-Income Housing Coalition, *Out of Reach 2010: Renters in the Great Recession, the Crisis Continues*, at 9, (2010) (available at <http://nlihc.org/sites/default/files/oor/2010-OOR.pdf>) (“The Nassau and Suffolk areas rank ninth and tenth respectively as the most expensive counties for housing in the United States and together form the seventh least affordable metropolitan area.”).

¹¹ 87 Fed. Reg. at 14334.

¹² Action Plan at 50.

¹³ Enterprise Community Partners, *FEMA Assistance Analysis* at 5, available at <http://www.practitionerresources.org/cache/documents/678/67899.pdf>.

example, Long Island, which consists of Suffolk and Nassau Counties,¹⁴ has a long history of segregating African-American residents through racial steering, blockbusting, and exclusionary zoning.¹⁵ Consequently, large proportions of Long Island's African-American residents have been steered to towns like Hempstead, while virtually none reside in nearby towns like Garden City, which enjoy a higher tax base and more and better resources.¹⁶ The Action Plan must consider the racial geography to avoid perpetuating residential segregation. Indeed, the HUD Notice calls for grantees to provide impact assessments for the "lowest geographic level practicable,"¹⁷ and because resident zip codes were among the data collected by FEMA, the Small Business Administration (SBA), and other agencies and relied on by the State to conduct its impact assessment, this kind of town-by-town analysis is certainly practicable.

Absent any discussion of the characteristics or location of affected populations, it is unclear that the housing programs set forth in the Action Plan will address the needs of LMI and minority residents. Accordingly, we recommend that the State include a detailed analysis of the populations affected by the storm in its unmet needs assessment. We also recommend that the State consider and incorporate into its Action Plan programs to provide renters with immediate and short-term assistance, in addition to the proposed programs designed to ensure that the rental market rebounds in the long term. Some examples of short-term assistance include tenant-based rental assistance (e.g., vouchers given directly to tenants) and subsidies to landlords who agree to provide affordable rental housing.

(2) Lack of Specificity About Criteria for Distribution of Funds

The Action Plan should clarify (1) how much of the \$788 million of the initial CDBG-DR allocation for housing programs the State will allot to each program or, for programs issuing grants to individuals, and (2) what criteria will be used to determine who will receive grants and the size of the grants.¹⁸ The Action Plan states that the "allocation will be dependent upon the total number of all eligible activities identified and the total amount of funding approved for all other eligible activities."¹⁹ Even if the State requires more information before it can determine how much money should be allocated to each program, the State can establish the criteria it will use to determine how and to whom grants will be distributed. Such criteria are necessary to ensure that the

¹⁴ Pursuant to the HUD Notice, a minimum of 80% of the State's allocation must be expended on Nassau, Suffolk, and Rockland Counties, which were identified as "the most impacted counties" in New York. 87 Fed. Reg. at 14330.

¹⁵ Marcelle S. Fischler, *Pushing the Fight Against Segregation*, N.Y. Times, Mar. 25, 2007, available at <http://www.nytimes.com/2007/03/25/nyregion/nyregionspecial2/25LIPeople.html>.

¹⁶ See Bruce Lambert, *Long Island Has Failed to Stem Segregation, A Group Charges*, N.Y. Times, April 19, 2005, available at <http://www.nytimes.com/2005/04/19/nyregion/19race.html>.

¹⁷ 87 Fed. Reg. at 14333.

¹⁸ With respect to the proposed Recreate NY Smart Home Repair and Reconstruction and the Recreate NY Smart Home Resilience programs, the Action Plan does state that "[h]ousehold income may be used in determining eligibility for assistance under this program, or may, at a minimum, be required for reporting purposes" Action Plan at 18.

¹⁹ *Id.*

State complies with its obligation to expend 50% of its CDBG-DR funds in a manner that benefits low- and moderate-income individuals.²⁰ In establishing these criteria, the State not only must consider how the programs will benefit LMI individuals, but must be certain to adopt standards that do not inadvertently disadvantage low-income and minority households. For example, should the State choose to distribute funds under the housing assistance programs on a “first-come, first-served” basis, low-income individuals may be at a disadvantage because they are more likely to lack the information or resources needed to prepare their applications quickly.

The Action Plan also states that the State intends to allocate an unspecified amount of its CDBG-DR funds to Units of General Local Government (UGLG) to assist in the administration of housing programs, and that such UGLGs will receive funds “on a non-competitive entitlement basis, based on an assessment of unmet need.”²¹ This is not enough information to ensure that the State and subgrantees are meeting their obligation to expend 50% of their CDBG-DR funds in a manner that benefits LMI households. The Action Plan must describe the capacity of any UGLGs receiving CDBG-DR funds to carry out the proposed housing programs and the “threshold factors or applicant eligibility criteria, grant size limits, and proposed start and end dates” for those programs.²² The current Action Plan contains none of these details.

While we applaud the State’s intent to undertake an outreach and marketing campaign to raise public awareness about its proposed housing programs,²³ and believe such efforts are an important step toward ensuring that all affected communities have the opportunity to participate in these programs, we cannot evaluate the appropriateness of these programs without more specific information about their parameters and implementation.

(3) Lack of Detail Regarding the Provision of Disaster-Resistant Housing for All Income Groups

The HUD Notice requires that each Action Plan contain a description of how the State will encourage provision of disaster-resistant housing for all income groups.²⁴ The New York State Action Plan has a section titled “Provision of adequate, flood resistant housing for all income groups that lived in the disaster impacted areas” but, like other parts of the Action Plan, this section lacks a specific description of actions the State will take in this regard and instead points readers to the State of New York’s 2011-2015 Consolidated Plan, approved by HUD in December, 2010, for “specific strategies and actions that the State takes to address a variety of housing needs for low- and moderate income-persons, the at-risk population group, as well as those with special needs.”²⁵ Furthermore, this section states: “While serving eligible LMI households will be the State’s priority, our assessment of need demonstrates that the impact of these disasters

²⁰ 87 Fed. Reg. at 14340.

²¹ Action Plan at 39.

²² 87 Fed. Reg. at 14335.

²³ Action Plan at 17.

²⁴ 87 Fed. Reg. at 14334.

²⁵ Action Plan at 38.

extends far beyond predominantly LMI neighborhoods. Therefore, the State will also work to qualify [households above the income threshold] under the National Objective of urgent need.”²⁶ The Action Plan lacks sufficient explanation of how this expansion will work.

(4) No Plan to Ensure Affirmatively Furthering Fair Housing Obligations Are Met

The Action Plan does not explain how New York State intends to ensure compliance with certain provisions of the HUD Notice regarding equal access to housing. Specifically, the HUD Notice requires that the State certify that it will

affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within its jurisdiction and take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard . . . [and] that agreements with subrecipients will meet all civil rights related requirements [under federal law].²⁷

However, the only reference the Action Plan makes to this obligation is that grant recipients “will be required to take steps to affirmatively further fair housing” and, in planning and implementing housing activities, must include in the discussion groups, such as neighborhood organizations and social services organizations, as well as “members of each distinct affected community or neighborhood which might fall into the assistance category of low- and moderate-income communities.”²⁸ This language is neither strong enough nor specific enough to fulfill the State’s obligation, especially in light of housing discrimination in the very recent past. The Action Plan must specify how the proposed housing programs will address the continuing effects of prior exclusionary land use practices and other impediments to equal access to housing. This should include a specific statement that communities that engage in exclusionary practices will be ineligible for CDBG-DR funds.

The Action Plan must include (1) detailed and concrete plans and outlines regarding the manner in which the State will distribute funding for its proposed housing programs; (2) a more detailed analysis of the needs of LMI and minority residents and programs to address those needs; and (3) specific plans and outlines regarding the

²⁶ *Id.* at 51.

²⁷ 87 Fed. Reg. at 14347.

²⁸ Action Plan at 52.

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fulfillment of grantees' fair housing obligations. We respectfully request the State to revise its Action Plan consistent with these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "ReNika C. Moore". The signature is fluid and cursive, with a large initial "R" and "M".

ReNika C. Moore
Director, Economic Justice Group